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REPORT

OF THE

Commission of Public Lands

FOR THE YEAR ENDING

DECEMBER 31, 1900

1901
PRESS OF EVENING BULLETIN
HONOLULU, T. H.

COMMISSION OF PUBLIC LANDS

REPORT

—FOR—

YEAR ENDING DECEMBER 31, 1900

PUBLIC LAND OFFICE,
January 1, 1901.

SANFORD B. DOLE, ESQ.

GOVERNOR TERRITORY OF HAWAII.

Sir: On behalf of the Commissioner of Public Lands, I have the honor to submit the following report on the transactions of this office for the year ending December 31, 1900.

During the intervening dates between January 1, 1900, to June 14th, 1900, the following gentlemen were Commissioners of Public Lands, to wit:

Alexander Young, Esq., Ex-Officio.

Wm. R. Castle.

J. F. Brown, Agent of Public Lands.

No new business of any kind was transacted during this period as the Executive Order of President McKinley was then still in force.

Under Section 73 of "An Act to provide Government for the Territory of Hawaii" which took effect on June 14, 1900, Commissioner of Public Lands was substituted for Commissioners of Public Lands. Since which time Mr. J. F. Brown as Commissioner of Public Lands (Commissioned as such under date of June 14, 1900) has been performing the duties that were heretofore required of three Commissioners.

This Commission is represented in the various Land Districts by the following Sub-Agents:

E. D. Baldwin, First Land District,
Chas. Williams, Second Land District,
J. Kaelemakule, Third Land District,
W. O. Aiken, Fourth Land District,
E. S. Boyd, Fifth Land District.

The latter being also Secretary and Chief Clerk of the General Office.

SURVEY WORK

This work is still being performed by the Government Survey Office. I would beg to state that very little survey work was done during the year. sub-division of Public Lands was practically suspended from January 1, to June 14, 1900; this was occasioned by the existing uncertainty at that time of what provisions Congress would make for their disposition. Since June 14, however, steps have been taken to continue this very important work, as numerous petitions have been received from applicants for lands in different localities. The lack of competent surveyors for such work is a source of considerable embarrassment at this time, as private work which is plentiful absorbs most of the Surveyors. Progress however, will shortly be made in the surveys of lands in Waialua, Maui, in Kaauhuhu, Kohala, in North Hilo, Hawaii, and many other different localities desired by numerous applicants.

The survey of the lower portion of Hauula containing an area of about 159.00 acres on this Island was commenced on August 28, 1900, and completed September 5, 1900. This tract has been sub-divided into 32 lots averaging 2 to 3 acres

of Kula Land and a little less than an acre of Wet Land for the purpose of Homestead Leases to natives who have long been [illegible] of the land, and will be opened up at an early date.

There are about 2000 acres in Hamakua, Hawaii, already surveyed into lots, which will also be opened up at an early date. An equal area of about 2000 acres in North Kona awaits decision as to road location, and will as soon as possible thereafter be opened up.

The lands that have already been surveyed and opened during the year (including one Lot remaining from a former period) under the Land Act, is shown in the following table:

TABLE

SHOWING LANDS TAKEN UP UNDER GENERAL PROVISIONS OF LAND ACT (OTHER THAN CASH SALES AND OLAA PURCHASES UNDER SPECIAL CONDITIONS OF PART IX.)

LAND DISTRICT	RIGHT OF PURCHASE LEASE			CASH FREEHOLD			SPECIAL AGREEMENT			HOMESTEAD	
	No.	Acres	Value	No.	Acres	Value	No.	Acres	Value	No.	Acres
First—Hilo and Puna	.....	.....	.....	.....	.....	.....	87	4304.15	$ 79,045.26	.....	.....
Second— Hamakua and Kohala	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Third—Kona and Kau...	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Fourth—Maui, Molokai..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Fifth—Oahu	.....	.....	.....	.....	.....	.....	1	61	4,000.00	.....	.....
Sixth—Kauai.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Totals.....	.....	.....	.....	.....	.....	.....	88	4365.15	$ 83,045.26		

SUMMARY OF ABOVE.

	No.	Acres.	Value.
Right of Purchase Leases.. ..	.....	.....	
Cash Freehold	..	.....	.....
Special Agreements..	88	4365.15	83,045.26
Homestead Leases	..	.....	.....
	88	4365.15	$ 83,045.26

OLAA LAND PURCHASED UNDER PART IX LAND ACT DURING YEAR ENDING DECEMBER 31, 1900.

(Value appraised in Land Act.)

Land.	No. Patents.	Acres.	Value.
Olaa, Puna, Hawaii	10	825.75	$ 3152.27

The above table shows that hardly any new business was transacted during the year. In consequence of President Mckinley's order of September 11, 1899, discontinuing the further disposition of public lands, other than routine office work, was suspended during the first six months of 1900.

After the passage and final taking effect of our Organic Act, questions again arose as to our authority to dispose of any of the Public domain under the Right of Purchase Lease and Homestead Lease system of the Land Act, which respectively are for 21 years and 999 years, for under the provisions of Section 73 of said Act; no Lease on any Agricultural Lands shall be made for a longer period than 5 years; consequently the Commissioner of Public Lands deemed it advisable to obtain a ruling in the matter before proceeding to open up Public Lands under these systems, which were subsequently submitted under date June 30, 1900. A ruling on these questions has since been received, sustaining our views in the matter. To obtain this however, took some little time, consequently as shown in the above table, no Right of Purchase Leases or Homestead Leases were issued during the year.

Of the 88 Special Agreements 87 were for the Olaa Lots; and were advertised for sale under Special Conditions August 1, 1900, to be sold in the town of Hilo, September 20, 1900.

The special conditions under which they were sold provided for a term of residence, and for a series of easy payments, extending at option of purchasers over a period of 10 years, and were specially intended to provide easy terms for bona fide settlers, while it discouraged as far as possible the mere speculator.

Before proceeding further, it might be well to mention, that some of the so-called "Olaa Squatters;" to which much

reference was made in our 1898-1899 report were still occupying some of these Lots; endeavored to stop its sale, substantiated by a protest being filed by them, and received by the Commissioner of Public Lands under date of September 3, 1900, disputing his authority to make any disposition of the Public domain of the Territory of Hawaii. Their claims being irrelevant, it was not considered or recognized, as his authority in the matter was explicitly set forth in Section 73 of the Organic Act.

The realization from this sale far exceeded our most sanguine expectations; some of the lots bringing $30.00 to $50.00 per acre, being nearly in every instance 4 times the appraised value thereof; which fact alone demonstrates that desirable Homesteads are in demand.

Lot at Wahiawa, Waialua, Oahu, containing 61 acres, was sold at auction under Special Conditions of residence and cultivation; and sold for the unusual price of $4000.00 from an upset price of $300.00. This is owing to special location on this Island.

CASH SALES.

During the year ending December 31, 1900, viz.:

	Acres.	*Purchase Price.*
Pouhala, Ewa, Oahu	.50	$315.00

This land is a portion of the old Pouhala Fish Pond, fronting the Oahu Railway and Land Co. Track.

NEW LEASES MADE DURING YEAR ENDING DECEMBER 31ST, 1900.

	Term Years.	Acres.	Annual Rental.
Kahikinui, Maui	5	25,000	$3010.00

The lease was sold at auction and covered the arid, waterless lands of Kahikinui, of which a large amount is represented by barren lava flows. Although such reservation seems superfluous, a condition of the lease reserves the right of the Com-

missioner to take over any portion if same should be found suitable for settlement purposes.

LICENSES.

Issued during year ending December 31, 1900.

Licensee.	Locality.	Term Years.	Annual Rental.
Theo. F. Lansing.	Waiahole, Oahu.	30	$ 10.00

This license was issued to T. F. Lansing for a right of way for a pipe line for conveyance of water across certain Public Lands in Waiahole, Koolaupoko, Oahu, and upon condition that construction of pipe line shall be such as not to interfere with or impair the value of said lands, or to create obstructions in the present course of the Waiahole Stream; and also not to be held to convey any water rights, or to prejudice any existing rights in said stream.

Receipts Commission of Public Lands for year ending December 31st, 1900:

LAND SALES.

Right of Purchase Leases	$ 38.99	
Special Agreements	3,846.10	
Homesteads	1,496.60	
Cash Freehold	350.77	
Olaa Lots	445.80	
		$6,178.26

LAND REVENUE.

Rents, General Leases	$90,180.79	
Rents, Right of Purchase Leases...	5,407.73	
Rents, Olaa Leases	511.83	
Rents, Puukapu Leases	26.75	
Rents, Kaimu Leases	124.30	
Rents, Miscellaneous	1,277.50	
Interest, Homesteads	455.10	
Interest, Special Agreements	681.57	
Interest, Cash Freehold	31.45	
Interest, Olaa Agreements	97.85	
..Office Fees	59.00	
		$ 98,853.37
Total Receipts for the year...		$105,032.13

The total receipts above show a decrease of $52,948.32 from that of the preceding year (1899). This was occasioned by the Executive order of President McKinley, which was still in force during the first 6 months of the year, and also under the provisions of Section 73 of the Organic Act "Confirming all agreements between July 7th, 1898, and September 28th, 1899, subject to the President's approval;" this clause again tied our hands as to the collection of rents, interests and purchase prices on those agreements until the receipt of such approval; even collections of purchase prices on agreements prior to July 7th, 1898, were also suspended. Under these circumstances, and the precautionary steps taken, I consider the above to be a very creditable showing. In Land Revenue a decrease of $10,826.73 and in Land Sales $42,121.59 is shown.

The above agreements have been approved by the President under date of November 30, 1900. In consequence whereof the receipts for the coming year will more than offset the decrease.

STATEMENT OF EXPENDITURES FOR THE YEAR ENDING DECEMBER 31, 1900.

ITEMS	APPROPRIATION	DRAWN	TOTAL DRAWN	BALANCE
Salary Land Agent	$ 6,000 00	$ 3,000 00	$ 3,000 00	$ 3,000 00
Salary Secretary & Sub-Agent, 5th District	4,200 00	2,100 00	2,100 00	2,100 00
Salary Clerk	2,400 00	1,200 00	1,200 00	1,200 00
Salary Assistant Clerk	1,200 00	130 00	130 00	1,070 00
Pay Sub-Agt, 1st District	3,000 00	1,500 00	1,500 00	1,500 00
Pay Clerk, 1st District	1,200 00	600 00	600 00	600 00
Pay Sub-Agt. 2d District	1,200 00	578 33	578 33	621 67
Pay Sub-Agt, 3d District	960 00	480 00	480 00	480 00
Pay Sub-Agt, 4th District	1,200 00	600 00	600 00	600 00
Pay Sub-Agt, 6th District	720 00			720 00
Pay Ranger, 1st Land District	1,200 00	600 00	600 00	600 00
Pay Ranger, 2d Land District	720 00	360 00	360 00	360 00
Pay Ranger, 3d Land District	720 00	360 00	360 00	360 00
Pay Ranger, 4th Land District	720 00	360 00	360 00	360 00
Pay Ranger, 5th Land District	720 00	60 00	60 00	660 00
Amt carri'd forw'd	$ 26,160 00		$ 11,928 33	$ 14,231 67

STATEMENT OF EXPENDITURES—*Continued.*

ITEMS	APPROPRIATION	DRAWN	TOTAL DRAWN	BALANCE
Amt brt forward	$ 26,160 00		$ 11,928 33	$ 14,231 67
Pay Ranger, 6th Land District	$ 720 00	—	-	$ 720 00
Incidentals	5,000 00			
Office exp.		920 92	-	
Traveling expenses		346 35		
Printing	-	194 70		-
Advertising.		367 75	-	
Pay Appraisers		30 00	1,859 72	3,140 28
Preliminary Roads and Trails	7,000 00	620 80	620 0	6,379 20
	$ 38,880 00		$ 14,408 85	$ 24,471 15

LAND PATENTS.

Under Section 73 of the Organic Act, the duties of issuing land patents, Patents on Land Commission Award and the custody of all original documents in connection therewith have been transferred to this Commission. Previous to June 14, 1900, it was under the control of the Minister of the Interior, consequently this office has no knowledge what business was done during the first 6 months of the year. But it is safe to say that, from appearances of the Records when they were finally passed over to this office, no new Land Patents were issued during that period.

Land Patents issued since June 14, 1900, are as shown in the following statement:

STATEMENT OF LAND GRANTS ISSUED DURING THE YEAR ENDING DECEMBER 31, 1900.

No. of Patent	Grantee	Date 1900	Area Acres	Location	Disfrict	Island	Consider-tion	Fee	Remarks
4385	C. W. Hill.....	Aug. 2	47.25	Olaa	Puna	Hawaii	$ 283.50	$ 5.	Olaa Reservat'n
4386	"	"	150.00	"	"	"	450.00	5.	"
4387	Isabella Renwick and Jessie R. Brockie.....	"	97.25	"	"	"	483.50	5.	"
4388	" "	"	102.75	"	"	"	308.25	5.	"
4389	A. F. Wall.....	"	50.00	"	"	"	150.00	5.	"
4390	"	"	150.00	"	"	"	450.00	5.	"
4391	Kamaki	"	28.50	"	"	"	170.00	5.	"
4392	Marion de Carmo.....	"	17.65	Waiakoa	Kula	Maui	88.25	5.	Homestead
4393	Eleanor M. Wilcox.....	Dec. 10	.63	Punchbowl Slope	Honolulu	Oahu	750.00	5.	Time Payment
4394	H. Willgeroth.....	"	43.80	Waiaha II	N. Kona	Hawaii	570.00	5.	"
4395	A. W. Richardson	"	29.70	Olaa	Puna	"	89.10	5.	Olaa Reservat'n
4396	"	"	25.40	"	"	"	76.20	5.	"
4397	"	"	144.90	"	"	"	691.72	5.	"
4398	C. E. Moore.....	Dec. 28	96.50	Awini	N. Kohala	"	482.50		Time Payment
4399	A. V. Callaghan.....	"	89.50	Kamaili	Puna	"	492.25		"
4400	D. H. Davis.....	"	82.50	Paauilo	Hamakua	"	932.87	5.	"
4401	Geo. R. Carter.....	"	66.50	Kamaili	Puna	"	332.00	5.	"
4402	J. N. Bell.....	"	104.20	Awini	N. Kohala	"	659.00	5.	"
Total, 18			1327.03				$7459.14	$80.	

From present indications the number of Land Patents that will be issued during the coming year will far exceed those that have been issued in any previous year.

ROADS AND TRAILS.

As shown in above statement of Expenditures, a very small amount has been expended during the year, and the amount so expended has been for trails through the upper Maulua tract and in Olaa.

The matter of roads to and through Public Lands opened for settlement, and the difficulty with which this office meets in dealing with the question, was dwelt upon at some length in the report of this office for 1899, and the difficulties quoted in that report have equal force today.

ESTIMATED RECEIPTS.

Land Revenue—		
General Leases	$100,000.00	
Olaa (Crown Leases)	$ 500.00	
Rents Right of Purchase Leases	12,000.00	
Interest	15,000.00	
Miscellaneous (this includes Office and Patent fees)	1,000.00	
		$128,500.00
Land Sales—		
On Time Payments	35,000.00	
Purchase of Right of Purchase Leasehold	35,000.00	
On Old Homestead Accounts	2,500.00	
Olaa Sale under Part IX Land Act	4,000.00	
Cash Sale	2,500.00	
		$79,000.00
		$207,500.00

The foregoing is considered to be a very conservative estimate.

Respectfully submitted,

EDWARD S. BOYD,
Secretary Commission of Public Lands.

APPENDIX.

In relation to questions that were raised by the United States District Attorney as to the legality of Hawaiian land transactions since September, 1899, I would beg to submit copies of correspondence and statements that actually took place in regard to the matter, as an appendix to the foregoing report; as follows:

SCHEDULE A.

John C. Baird,
U. S. Attorney.

DEPARTMENT OF JUSTICE.
Office of
UNITED STATES ATTORNEY,
District of Hawaii.

Hon. Jacob F. Brown,
Land Commissioner of Hawaii, City.

Honolulu, Nov. 5th, 1900.

Dear Sir:—I have the honor to respectfully apply for information from your office concerning the following matters of business relating to public property in the Territory of Hawaii, and originating on and after Sept. 23, 1899, to wit:

Leases of public lands: the names of the lessees and their assignees, if any, descriptions of the lands and acreage leased, and termination of leases; also the dates of the same.

Sales of public lands: the names of the purchasers and their assignees, if any, description of the lands and acreage sold, and dates of deeds, or patents.

Contracts for sales of public lands: The names of the purchasers and their assignees if any, descriptions of the lands and acreage contracted for, and dates of contracts.

Sales or contracts for sale of, or leases of, Water Rights: The names of purchasers, and their assignees, if any, description of water rights, including the name and location of the stream or body of water drawn from, location of the point of division, and

quantity of water so disposed of, and the acreage to be irrigated thereby, if known. Also dates of the instruments of conveyance or agreement.

Advertisements of sale or for tenders respecting public lands or water rights now pending.

I trust that it will not seriously inconvenience your office to furnish the information desired.

Yours respectfully,

(Signed.) JOHN C. BAIRD,
United States Attorney for Hawaii.

COMMISSION OF PUBLIC LANDS,
TERRITORY OF HAWAII,
Honolulu, Nov. 9th, 1900

John C. Baird, Esq.,
United States Attorney for Hawaii.

Dear Sir:

Enclosed please find copies of official correspondence in reference to Public Land matters as follows:

Letter of Governor Dole to the Secretary of Interior, Washington, in reference to Homestead and Right of Purchase Leases, and reply of Thos. Ryan, Esq., Acting Secretary, thereto.

Letter of F. L. Campbell, Acting Secretary of Interior Department to Governor Dole enclosing opinion of Willis Vandevater, Assistant Attorney General for Interior Department, in re the issuance of Land Patents in the Territory of Hawaii.

I take the liberty to enclose also a statement of the view held in this office of the laws applying to the public lands of the Territory, and under which all recent transactions have been made. A detailed statement of these is well advanced and will be presented to you shortly.

Yours respectfully,

(Signed.) JACOB F. BROWN,
Commissioner of Public Lands,
Territory of Hawaii.

EXECUTIVE CHAMBER,

Territory of Hawaii,

Honolulu, July 10th, 1900.

Honorable E. A. Hitchcock,

Secretary of the Interior,

Washington.

Sir:—

Section 74 of an Act to Provide a Government for the Territory of Hawaii, enacts that "no lease of agricultural land shall be granted, sold or renewed by the government of the Territory of Hawaii, for a longer period than five years, until Congress shall otherwise direct."

I desire instructions whether this provision applied to Homestead Leases and Right of Purchase Leases. The law for Homestead Leases which will be found in the Civil Laws of the Hawaiian Islands, sections 212 to 238 inclusive, provides special proceedings for settling persons on small homesteads. Although the holding is called a lease, it is hardly so in any legal sense, inasmuch as no rent is reserved and the term of the occupation is 999 years: in other words permanent. It is really a fee to the holder and his heirs, without the right of alienation. To apply the above quoted provision to the homestead lease legislation would render wholly nugatory a most valuable enactment for the settlement of persons on small holdings, which is of particular importance to native Hawaiian and other persons who may have little capital and not a large endowment of thrift.

The Law for Right of Purchase Leases if from section 239 to section 248, of the Civil Law, both inclusive.

The legislation providing for Right of Purchase Leases, establishes a system of land settlement in small holdings, which has been more successful and popular than any of the other methods devised by the Hawaiian Land Act of 1895. The successful applicant receives a lease for 21 years, which fixes the value of the land for the term of the lease, as between the government and the lesee and the performance of certain reasonable conditions of residence and improvement, allows the lessee to acquire a fee simple title by purchase at any time before the last year of the lease. This allows the settler to use his capital at the outset

for improvements and cultivation, and to put off the day of purchase until he is well established.

If the provision of the Territorial Act above quoted, applies to Right of Purchase Leases, it renders this system substantially impracticable.

In both of the cases referred to, such a result would seriously interfere with the policy of land settlement in small holdings.

I submit that a reasonable construction of the Territorial Act excludes the application of the provision in question from Homestead leases and Right of Purchase Leases, for these reasons:

1st. The fact that Congress has for the most part continued the Hawaiian Land Laws in force (section 73 and 99) which laws are based largely upon a policy of land settlement in small holdings, militates against a construction that would interfere with such a policy.

2nd. The Congressional discressions of Hawaiian matters showed that the prevailing sentiment of both Houses was in favor of such a land policy, and radically opposed to any legislation that would give corporations an opportunity to acquire lands in fee to any great extent. This being so Congress could not have intended to interrupt the legislation already in existence for land settlement in small holdings.

3rd. The word "lease" used in the provisions referred to, not being connected with the words extending its meaning, must be taken in its ordinary sense, which is a simple lease for a term conditioned upon payment of rent and under which all right of occupation terminates at the expiration of the term.

Yours very respectfully,

(Signed.) SANFORD B. DOLE.

DEPARTMENT OF THE INTERIOR,

WASHINGTON,

P. and M. Div. July 27, 1900.

Hon. Sanford B. Dole,
Governor of Hawaii,
Honolulu, Hawaii.

Sir:—

The Department is in receipt of your communication of the 10th instant, desiring instructions as to whether the provision in

section 73 of an Act of Congress entitled "An Act to provide a government for the Territory of Hawaii," approved April 30, 1900, "and no lease of agricultural land shall be granted, sold or renewed by the government of the Territory of Hawaii for a longer period than five years until Congress shall otherwise direct," applies to Homestead Leases and Right of Purchase Leases.

Said Section 73 provides:

That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this act, shall continue in force until Congress shall otherwise provide.

An examination of the laws of Hawaii in connection with the provision of the Territorial act referred to by you leads to the conclusion that your opinion that it was not intended that said provision should apply to Homestead Leases or Right of Purchase Leases is justified. The Homestead being for nine hundred and ninety-nine years and reserving no rent is, as you say, in effect the conveyance of the fee and is given after compliance with certain requirements as to residence upon and improvement and cultivation of the land very similar to the requirements of the homestead law in force in other parts of the United States.

The so-called Right of Purchase lease is a part of the proceedings in another method for the acquisition of public lands. It was evidently not intended to change the existing provisions of the Hawaiian law by which title the public lands may be acquired, but it was the intention to continue those provisions in force for the present, at least.

Your are therefore instructed that the provisions of the Territorial act referred to does not apply to Homestead Leases or Right of Purchase Leases.

Very respectfully,

(Signed.) THOS. RYAN,

Acting Secretary.

EXECUTIVE CHAMBER.

Territory of Hawaii,

The Honorable
E. A. Hitchcock,
Secretary of the Interior,
Washington.

August 21st, 1900.

Sir:—

Some doubt exists in my mind as to the execution of land patents and other instruments for the disposition of public lands.

Our land laws as amended by the Territorial Act, provide that land patents shall be signed by the governor and countersigned by the Commissioner of Public Lands and that the said commissioner may make leases.

These provisions of law are supposably in force under section 73 of the Territorial Act. Section 458 of the Revised Statutes of the United States, 2nd edition 1878, provides that patents issuing from the General Land Office shall be issued in the name of the United States and be signed by the President and countersigned by the Recorder of the General Land Office. Sections 450 and 451 of the Revised Statutes, same edition, authorize the President with the advice and consent of the Senate, to appoint a secretary and assistant secretary, "whose duty it shall be under the direction of the president to sign in his name and for him patents for land sold or granted under the authority of the United States."

Does this provision bear upon the execution of land patents under the laws of the Territory of Hawaii, or shall I proceed in such matters under the provisions of our laws, regardless of these provisions of the Revised Statutes?

Very respectfully,

(Signed.) SANFORD B. DOLE.

DEPARTMENT OF THE INTERIOR.
Washington,
October 24, 1900.

The Governor of Hawaii,
Honolulu, H. I.

Sir:—

Your letter has been received, in which, after referring to the provisions of Section 450, 451 and 458 of the Revised Statutes

of the United States, relative to the issuing of Land Patents, you inquire as to whether these provisions govern in the executions of Land Patents under the laws of the Territory of Hawaii.

In response thereto, I transmit herewith for your information a copy of an opinion of the Assistant Attorney General for the Interior Department to whom the matter was referred, in whose conclusion that, for the present, the existing laws of the Territory of Hawaii govern the execution of Land Patents, I concur.

Very respectfully,

(Signed.) F. L. CAMPBELL,

3338, Acting Secretary.
2864.

2864-1900
P. and M. Div.

DEPARTMENT OF THE INTERIOR.

Office of the Assistant Attorney-General,

Washington, October 16, 1900.

The Secretary of the Interior,

Sir:—

I am in receipt by your reference with request for an opinion upon the question presented therein, of a letter from the Governor of Hawaii in which, after referring to the provisions of the Revised Statutes (Secs. 450, 451, and 458), relating to the issuing of land patents, he says:

Does this provision bear upon the execution of land patents under the laws of the Territory of Hawaii, or shall I proceed in such matters under the provisions of our laws regardless of these provisions of the Revised Statutes?

Said sections provide in substance that the President may appoint a secretary to sign his name to patents for land sold or granted under authority of the United States and that all patents issuing from the General Land Office shall be issued in the name of the United States and be signed by the President and countersigned by the Recorder of the General Land Office.

The Joint Resolution of July 7, 1898 (30 Stat., 750), accepting the cession of the Hawaiian Islands provides as to the public lands as follows:

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition.

Provision was made for the government of the Territory of Hawaii by the Act of April 30, 1900 (31 Stat., 141). By section 73 of that Act it is provided:

That the laws of Hawaii relating to public lands, a settlement of boundaries, and the issuance of patents on land-commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide. . . . In said laws "land patent" shall be substituted for "royal patent"; "commissioner of public lands" for "minister of the interior," "Agent of public lands," and "commissioners of public lands" or their equivalents.

Section 9 of said Act provides:

That wherever the words President of the Republic of Hawaii or Republic of Hawaii, or Government of the Republic of Hawaii, or their equivalents, occur in the laws of Hawaii, not repealed by this Act, they are hereby amended to read "Governor of the Territory of Hawaii," or "Territory of Hawaii," or "Government of the Territory of Hawaii" or their equivalents as the context requires.

Provisions as to the preparation, execution and issuance "Royal Patents" and "Land Patents" are found in sections 171, 172 and 200 of the laws of Hawaii (1897) none of which sections is found in the list of Acts, Chapters and Sections of the laws of Hawaii, specifically repealed by said Act of Congress of April 30, 1900, *Supra.*

These sections are changed by the substitution and amendments made by the Act of Congress are in force and are to remain in force until Congress shall otherwise provide. Thus a system differing from that provided by the Revised Statutes is for the present provided for the Territory of Hawaii. The provisions thus made applicable to this Territory must control.

The paper submitted is herewith returned.

Very respectfully,

(Signed.) WILLIS VAN DEVANTER,
Assistant Attorney General.

Department of the Interior, October 16, 1900.

Approved.

(Signed.) F. L. CAMPBELL,
Acting Secretary.

COMMISSION OF PUBLIC LANDS.

The Joint Resolution of Annexation approved July 7th, 1898, provided that "the existing laws of the United States relative to Public Lands shall not apply to such lands in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition."

Until Congress should enact such laws, no power existed in their local government to alienate or change the status of the Public Lands in Hawaii, and although under a misunderstanding of the purport of this clause of the resolution, certain transactions in public lands were made before Congress had enacted these special laws, such transactions were annulled by President McKinley under date of September 11th, 1898, upon the opinion of the Attorney General of the United States that such transactions were without warrant of law.

Congress has since, however, enacted the special laws required by the resolution of annexation, and by "An Act to Provide a Government for the Territory of Hawaii," approved April 3rd, 1900, has specifically enacted by Section 73 of said Act "that the laws of Hawaii relating to public lands, the settlements of boundaries and the issuance of patents on land commission awards, except as changed by this Act, shall continue in force until Congress shall otherwise provide": and such intended continuance is emphasized by the changes made to adapt such laws to the new conditions after the taking effect of the Act.

The continuance of the Land Laws of Hawaii by the Organic Act of April 3rd, 1900, could not, however, affect those transactions that had been annulled as aforesaid, and an additional clause therefore appears in the said Section 73 ratifying and confirming, subject to the approval of the President, all sales, grants, leases and other dispostions of the public domain and agreements concerning the same, and all franchises granted by the Hawaiian Government in conformity with the laws of Hawaii between the seventh day of July, 1898, and the twenty eighth day of September, 1899.

It has been suggested that the continuance of the laws of Hawaii as enacted in Section 73 has reference only to those transactions between July 7th, 1898 and September 28th, 1899, but this appears to this office wholly untenable for the following reasons:

If any such limitation of the law was intended, such in-

tention would certainly and easily have been stated, rather than the clear and unmodified statement that the existing laws should remain in force until Congress should otherwise provide.

The changes made in the Laws of Hawaii by Section 73 are meaningless and useless as limited to those transactions between July 7th, 1898, and September 28th, 1899.

The provision that no lease of agricultural land shall be made for longer period than five years is useless in reference to the transactions between those dates. Those transactions are fully ratified and confirmed by Congress subject only to the President's approval: the amendment as to the five year lease has value only as applied to new transactions.

Of still greater significance, however, is the change in the laws made by Section 73 in substituting the words "I am a citizen of the United States" or "that I have declared my intention to become a citizen of the United States, as required by law" for the words, "that I am a citizen by birth (or naturalization) of the Republic of Hawaii," etc.

This change is absolutely unnecessary as applying to any old transactions, for these words are used only in the original applications for lands under the various systems. What is the meaning of this change in connection with lands not only applied for months before, but sold, granted and leased already and which sales, grants and leases Congress ratifies and confirms, subject only to approval of the President? This change evidently is made with reference to the transactions that should ensue after the passage of the Territorial Act. In brief, the changes in the laws provided by Section 73 are necessary only in case the land laws of Hawaii were continued in force for the disposition of new lands.

They are superfluous, meaningless and misleading as limited to the transactions from July 7th, 1898 to September 28th, 1899.

No one questions that the title to the public lands of this Territory is in the United States and probably no one questions that Congress may make such disposition of those lands as it sees fit. It has, by Section 99, definitely asserted the title to the lands known as Crown Lands and makes the same "subject to alienation and other uses as provided by law."

Such law has been provided by Section 73 which, making certain changes to adapt existing laws to new conditions, thereupon

continues the existing laws until Congress shall otherwise provide. These laws are full and explicit. They cover the case of each and every transaction since the passage of the Act, and are understood by this office to be the clear statement of the methods by which Congress has for the present chosen to dispose of Public lands in Hawaii.

It is claimed that as the title to these lands is in the United States, and no formal cession has been made back to the Territory of Hawaii, that the local authorities are powerless to dispose or any portion of the same. Without assuming to discuss the technical points that might be raised in this connection, I would submit that it is not held by this office, that these lands are the property of the Territory to be disposed of under local laws. It is held that they are lands of the United States to be disposed of as Congress has directed and shall direct—in other words, that the existing land laws are not the local laws of the Territory of Hawaii, but specials laws of the United States Congress applying to the Public lands in said Territory: and that Congress in explicitly continuing these laws practically re-enacted them and all their provisions as laws of the United States, subject to the modifications and changes that had been deemed necessary.

Section 91 of the Organic Act, commits to the possession, use and control of the Government of the Territory of Hawaii, to be maintained, managed and cared for at the expense of the Territory, until otherwise provided by Congress, "the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of Annexation approved July 7th, 1898.

The above is a general enactment covering numerous classes of property ceded under the joint resolution, and is subject to special enactment in regard to any particular class or portion of the property. Congress has "otherwise provided" for the disposition of the Public Lands of the Territory by Section 73, by the same section reserving to itself the right of any further provisions.

The enclosed correspondence from the Department of Interior, Washington, appear in strong confirmation of the views stated above.

The opinion of Mr. Vandevanter, Assistant Attorney General for the Department of the Interior, is in effect, that Section 73 of the Organic Act continues to local authorities the power to issue Land Patents for the Public Lands of this Territory.

If this important authority is so continued, it appears reasonable to suppose that all the provisions of the laws of Hawaii relating to public lands are continued, with the modifications and changes made by Congress, in full force and effect until Congress shall otherwise provide.

In endorsing the view of Governor Dole in the matter of Homestead and Right of Purchase Leases, Mr. Ryan, Acting Secretary, very directly states: "It was evidently not intended to change the existing provisions of the Hawaiian Laws by which title to the Public Lands may be acquired, but it was the intention to continue those provisions in force for the present at least."

Consideration of the original report of the Commission appointed to formulate an Act for the Government of the Territory of Hawaii, of Senate and House discussions, and the evidence of parties present at the hearing in committee pending the passage of the Organic Act, leaves, in the opinion of the undersigned, no doubt of the intention of Congress in this matter, which intention it is believed, is clearly expressed in the Act approved April 3rd, 1900, and to which it has been the purpose of this office to conform.

I have the honor to be

Yours very respectfully,

JACOB F. BROWN,

Commissioner of Public Lands,

Nov. 9th, 1900. Territory of Hawaii.

John C. Baird, Esq.,

United States Attorney for Hawaii.

COMMISSION OF PUBLIC LANDS.

Honolulu, H. T.,

John C. Baird, Esq., November 12th, 1900.

U. S. Attorney for Hawaii.

Dear Sir:—

In reply to the request for information contained in your communication of November 5th, I beg to submit the following statements.

You will note that after the date of September 28th, 1899, no transactions are recorded until after June 14th, 1900, the date of the taking effect of the Act to provide a Government for the Territory of Hawaii, as approved April 30th, 1900.

Understanding your request to apply only to transactions originating on or after September 28th, 1899, I have not included transactions in continuance or completion of any contracts, agreements, or dispositions of Public lands originating before such date.

For your further information in this matter, I beg to call your attention to the fact that there is a class of Public land not within the control or management of this office.

This class of lands is referred to in Section 186 of "Civil Laws," as follows:

"Provided, however, that this Act shall not apply to the following classes and descriptions of land, the property of the Government, all of which shall remain under the control and management of the Minister of the Interior.

"Town lots, sites of public buildings, land used for public purposes, roads, streets, landings, nurseries, tracts reserved for forest growth, and conservation of water supply, parks and all lands which may hereafter be used for public purposes. All lands hereafter reserved by the Commissioners for public purposes, shall thereupon at once pass under the control and management of the Minister of the Interior."

By the Act to organize the Government of the Territory of Hawaii, the duties of the "Minister of the Interior" in this connection, devolve upon the Superintendent of Public Works and information as to transactions on the class of lands referred to should be obtained from the office of Public Works, this office not having official knowledge of such transactions.

PUBLIC LANDS NOTICE.

OLAA TRACT, PUNA, HAWAII.

On Thursday, September 20th, at office of E. D. Baldwin, Hilo, Hawaii, will be sold at Public Auction about 200 lots of 50 acres each, at upset prices of from $1.00 to $12.00 per acre on following terms and conditions:

Purchaser may not acquire more than one lot.

The purchase price of the land to be paid within ten years, either in full at any time within said period of ten years, or in installments of one or more tenths of the purchase price on any interest date.

Interest at rate of 6 per cent annum from date of Agreement on unpaid balance of purchase price, payable semi-annually, in advance.

Purchaser shall substantially improve his holding within one year from date of Agreement, and shall from the end of second year have under cultivation at all times, not less than ten per cent of the premises. To entitle him to Patent Grant giving fee simple title, he shall continuously maintain his home upon the premises for a term of six years and have at the end of such term 25 per cent. of the premises under bona fide cultivation, or shall have maintained his home continuously upon the premises for four years and have under cultivation, at end of such period, 50 per cent. of the premises, such maintaining of a home to begin at any time before the end of fourth year from date of Agreement.

He shall plant if not already growing and maintain in good growing condition from end of second year until termination of Agreement an average of not less than ten timber, shade or fruit trees per acre.

He shall allow the Agents of the Government at all times to enter and examine the premises, and shall pay any taxes that may become due on the same.

At the end of the tenth year or earlier if all conditions necessary thereto have been substantially complied with, the purchaser shall be entitled to a Land Patent conveying in fee simple title to the land described in Agreement of Sale.

In case of default or failure to perform the required conditions the Commissioner may take possession of the premises and may

sell the same at auction, either as a whole or in parcels, for cash or terms of time payments; and if such sale results in advance on the original price, the original purchaser to receive therefrom the amount of his payments to the Government on account of purchase, without interest, and a pro rata share in such advance in proportion to the amounts of his payments. If such sale shall result, however, in a less price than the original the amount returned to him shall be charged with a pro rata amount of such decrease proportioned to the amounts of his payments.

An Agreement of sale covering such conditions shall be made with the Government and no assignment of interest under such Agreement shall be made without the written consent of the Commissioner of Public Lands.

J. F. BROWN,
Commissioner of Public Lands.

August 1, 1900.

OLAA SALE.

No. of Lot	Name	Area	Location	Pu chase Price
1	Francisco I. Bento	47.80	Olaa, Puna	$ 625.00
2	G V. Jakins	50.00	" "	2800.co
3	Mrs. N. A. Tracy	42 80	" "	385.co
4	L. A. Andrews	46.77	" "	155.00
5	A. Zimmerman	50.00	" "	1600 co
6	Joe Foida	50.00	" "	1580.00
7	Phillip Foida	48.51	" "	1260.00
8	John Moore	45.22	" "	560.00
9	Miss E. Grubb	49.08	" "	215.00
10	Antone Machado	49.08	" "	255.00
11	Mrs. N. Omsted	49.54	" "	300.co
12	Dr. Milton Rice	48.62	" "	775.00
13	M. de F. Spinola	48.62	" "	1325.00
14	G. F. Affonso	49.08	" "	1500.00
15	M. J. de Gouvea	50.00	" "	1500.00
16	D. Lycurgus	49.08	" "	1600.co
17	Chas. Lycurgus	48,62	" "	1600.00
18	C. H. Brown	50.00	" "	1700.00
19	Mary Kelly Stacker	50.00	" "	1650.00
20	A. O. Stevens	48.61	" "	1950 00
21	Joe Duarte	48.22	" "	1650.00
22	E. G. Hitchcock	48.22	" "	1425.co

No of lot	Name	Area	Location	Purnhase Price
23	J. R. Souza	49.14	Olaa, Puna	1100.00
24	J. M. Herring	48 68	" "	1150.00
25	V. F. Schoen	47.76	" "	1330.00
26	D. W. Marsh	48.22	" "	1200.00
27	T. Katsunuma	49.54	" "	1150.00
28	R. J. Lyman	48.39	" "	1225.00
29	L. M. Whitehouse	49.08	" "	1000.00
30	J. M. Givens	50.00	" "	1000.00
31	R. E. Maynard	49.54	" "	1050.00
32	Dr. C. R. Blake	49.54	" "	1050.00
33	Chas. McGonagle	48.62	" "	1110.00
34	E. L. Rackliff	50.00	" "	1025.00
35	C E. Sedwick	49.08	" "	800.00
36	Joaquin J. Silva	50.00	" "	725.00
37	Jose P. Amaral	49.08	" "	800.00
41	Jose Borges	49.54	" "	400.00
42	Ant. J. Estrella	49.54	" "	505.00
43	Dennis Machado	49.08	" "	610.00
44	John Figueira	49.08	" "	605.00
45	M. Jolkivsky	50.00	" "	600.00
47	Engy Verbitsky	49.54	" "	594.48
46	Michal Pazyk	48.62	" "	583.44
48	Jakub Markiewitch	49.08	" "	588.96
186	Jan Ben Larsky	49.08	" "	588.96
187	Peter Markiewitch	49.54	" "	495.40
198	W. H. Lambert	50.00	" "	900 00
199	John S. Pires	49.08	" "	775.00
200	A. W. Hobson	50.00	" "	775.00
201	Mrs. A. McGowan	48.62	" "	925.00
202	E. N. Holmes	49 54	" "	1025.00
203	Miss Euna Griggs	49.54	" "	1000.00
204	A. H. Behrens	50.00	" "	1000.00
205	W. W. Bruner	49.08	" "	1000 00
206	Manuel I Endio	48.39	" "	1125.00
207	W. Rockey	48.04	" "	1000.00
208	Miss G. McCannon	48 90	" "	1010.00
209	Dr. John Grace	48.64	" "	1050.00
210	J. B. Schoen	49.54	" "	975.00
211	R. Hawthrust, Jr.	50.00	" "	1350.00
212	C. K. Lyman	49.08	" "	1050.00
213	J. Riis	49.30	" "	1150 00
214	Mrs. M. E. Smith	48.62	" "	1800 00
215	C. E. Wright	50 00	" "	1700.00
216	A. H. Jackson	50.00	" "	1500.00

No. of Lot	Name	Area	Location	Purchase Price
217	Dr. M. Wachs	48.62	Olaa, Puna	1200.00
218	R. H. Bowman	49.08	" "	1080.00
219	A. G. Curtis	50.00	" "	805.00
220	Virginia H. Curtis	49.08	" "	915 00
221	G M Gouvea, Jr.	48 62	" "	291.72
222	Frank Silva	48 62	" "	710 00
223	S. Kapu	49.54	" "	320 00
224	J. Rocha	49 08	" "	355.00
225	Frank G. Rosa	49 08	" "	300 00
226	Mrs E. Elliott	49 08	" "	450 00
227	Manuel Delima	49 77	" "	300 00
228	J P. Amaral	44 78	" "	250 00
229	Mahi Lonoaea	38 65	" "	77.30
246	E. Medeiros	50 00	" "	100.00
263	Antonio Lorencio	50.00	" "	400 00
264	M. Rockey	50 00	" "	425 00
265	George Dunker	50 00	" "	415.00
195	Andrew Sajuwiz	48 62	" "	540.00
196	Manuel Ignacio	50.00	" "	605 00
197	Eugene Lyman	49.08	" "	600.00

The foregoing sales in Olaa, Puna, Hawaii, were made in accordance with Sec. 201 of "Civil Laws," at public auction in Hilo, Hawaii, Sept. 20th, 1900, on the terms and conditions set forth in printed notice enclosed.

The land was sold in lots of about 50 acres each, and is covered with heavy forest and jungle growth characteristic of the wet districts of Hawaii, being suitable, after clearing, to cultivation of coffee, sugar-cane, citrus fruits and general products.

The amount thus sold, about 4000 acres, is portion of a large tract having the same general qualities and a total area of about twenty thousand acres which has all been carefully surveyed and upon which an expenditure for surveys and the building of roads has been made by the local authorities to the amount of thirty or forty thousand dollars.

These lands are connected by good roads with the town of Hilo, and lie from ten to twenty miles from same.

The accompanying list of purchasers was prepared immediately after the sale and is presumably complete.

The agreements of sale to be made with purchasers for these lots, have not yet been executed but are in process of execution

in the Sub-Agent's office in Hilo, to be presented at this office for signature.

SPECIAL AGREEMENT.

Date of Agreement	Purchaser	Area	Location	Purchase Price
Aug. 1, 1900	James D. Dole	61 Acres	Lot 10, Wahiawa Waialua, Oahu	$4,000.00

The above agreement of sale was made under Section 201 of "Civil Laws," the land concerned having been sold at public auction in Honolulu, July 28th, 1900, for the purchase above.

This lot is agricultural land about 20 miles from Honolulu, at an elevation of about 1200 feet. It is open land suited to general farming purposes and was sold under conditions as follows:

One-fifth of the purchase price cash, the remainder in four equal installments. Purchaser to maintain his home continuously on the premises from the end of first to end of fourth year of agreement.

Twenty-five per cent of the land to be put under bona-fide cultivation by end of fourth year.

The above conditions are embodied in the agreement of sale duly issued and noted above.

CASH SALE.

Date of Sale	Purchaser	Area	Location	Purchase Price
Oct. 22, 1900	Mrs. S. C. Allen	50 Acres	Ewa, Oahu	$315.00

The land concerned above is a small lot of swampy land, portion of old fish pond on the line of Oahu railway about 10 miles from Honolulu.

No Land Patent or deed for above lot has yet been issued.

GENERAL LEASES.

Date of Lease	No.	Lessee	Term	Area	Location	Annual Rental
Sept. 1, 1900	528	A. Enos & Co.	5 yrs	25,000 Acres	Kahikinui, Maui	$30.00

The above lease was made upon sale at auction, September 1st, 1900, after 30 days' public notice. The lease is for term of five years from Feb. 1st, 1901, expiring Feb. 1st, 1906.

This tract of land estimated at 25,000 acres, covers the arid and almost waterless lands of the Kahikinui district, Maui. A large portion of this land is represented by absolutely barren lava flows. It has, however, a reasonable amount of pasture in favorable seasons and brackish water is obtained at the coast. This Kahikinui district appears practically devoid of agricultural possibilities, but the lease provides for the taking up of any land without reduction in rent, if the same is desired for settlement.

Lease further requires an annual expenditure of $200 in eradicating lantana from the land.

The rental obtained is considered by this office a good one.

GRANT OF RIGHT OF WAY.

Date	Grantee	Location	Annual Fee
Nov. 1, 1900	Theo. F. Lansing	Waiahole, Oahu	$10.00

The above is a grant of right of way for a pipe line for conveyance of water across public land at Waiahole, Koolau, Oahu, and between certain lands owned by the grantee. This right of way is granted for thirty years at an annual fee of Ten Dollars in accord with intent and purpose of "An Act to regulate the acquisition of Right of Way over the lands of others," approved August 13th, 1895. (See Civil Laws) Chapter 114, and is for right of way only, not conferring any water rights.

WATER RIGHTS.

No leases, sales or contracts have been completed with reference to any water rights since the date of September 28th, 1899.

A lengthy consideration has been given, however, to the joint application of the Waialua Agricultural Co. and the Hawaiian Fruit and Plant Co., to enter upon certain Public land in Waialua district for the purpose of constructing dams, reservoirs, flumes, etc., for the utilization of lands of those companies lying below. The matter is somewhat complicated and difficult of clear explanation, but is substantially as follows:

The Waialua Agricultural Co. is the undoubted owner of large water rights in the stream known as the Kaukonohua stream; the north branch of this stream arises on Public land

known as the mountain portion of Wahiawa. No one lives on this mountain portion and no use of the water has ever been made on that tract. The stream continues its flow through this mountain tract and through private lands below to Waialua Plantation, some nine or ten miles away, where it has been used for many years for irrigation and plantation purposes, and previous to that for the cultivation of the original Kuleanas or native holdings now almost wholly acquired by the Waialua Agricultural Co.

Near to this stream, but not adjoining the same except at the lower end is a tract of about 1300 acres which was sub-divided and taken up by a "Settlement Association" under the terms of the Hawaiain Land Laws. The north and south branches of the Kaukonohua stream unite at the lower end of this tract, passing in deep ravines through Lots 1 and 2. The holders of these lots therefore have certain limited riparian rights, but more particularly are possessed of valuable dam sites of great capacity which the Waialua Agricultural Co. desires to use. The holders of lot 1 and 2 are, however, with other members of the Settlement Association, constitute the Hawaiian Fruit & Plant Co., which company desires to obtain water for the whole of the 1300 acres of Public land taken up by settlers. To this end therefore it is proposed that a new water company shall be formed comprising the Waialua Agricultural Co. and the Hawaiian Fruit & Plant Co. which company will, if their application to the Government is granted, erect dams and reservoirs on the mountain portion of Wahiawa and thereby be able to deliver water by gravity at or near the upper end of the Settlement tract, and enable all the lands of that tract to receive a due supply. Surplus water will be directed to and stored in the lower reservoirs on lots 1 and 2 for further use on lower lands of the Waialua Agricultural Co.

In view of the fact of the large control of the water rights of this stream by the Waialua Agricultural Co., estimated by them at practically the whole of the usual flow, and certainly known to be large, and of the desire of the Government to obtain water for the settlers on public lands, very earnest consideration has been given to this question. The following proposition embodies the view of the Territorial officials and is fully in accord with the view held in this office.

That for the privilege of entering upon this upper tract of public land for the purpose named, the proposed new company shall

pay to the Government an annual fee of 10 per cent of the net profits with a minimum of $3000 per year.

This arrangement to be subject to readjustment at the end of 20 years and upon such readjustment to continue to the end of the life of the company, about 27 years longer.

This proposition has been presented to the applicants, but no acceptance of same has been received.

It is, I believe, in every way a proposition favorable to the Government. The sketch herewith will perhaps assist in the understanding of the points in issue.*

I am not able to state with certainty the flow of the north branch of the Kaukonohua stream concerned in this application.

It is a valuable perennial stream but varies greatly in its flow.

The parties applying for permission to enter on this upper tract of public land, propose to construct a ditch (shown in plan as "proposed ditch") of a capacity of 50 millions of gallons daily, this, however, having in view the carrying of storm waters as well as usual flow.

It is proposed by applicants to expend on this work and on the lower large dams on lots 1 and 2 an amount up to $250,000.00.

The foregoing is a full statement of the transactions of this office September 28th, 1899, to date, other than the usual routine work of the office and such transactions as applied to matters originating before that date.

I remain,

Very respectfully,

J. F. BROWN,

Commissioner of Public Lands,

Territory of Hawaii.

* NOTE—The sketch above referred to is on file in this office.

John C. Baird,
U. S. Attorney.

Department of Justice.
Office of
United States Attorney,
District of Hawaii.

J. F. Brown, Esq.,
Commissioner of Public Lands,
Honolulu, Hawaii.

Honolulu, Nov. 12, 1900.

Dear Sir:—

I beg to acknowledge receipt of your letter of this date inclosing statement requested by my letter of the 5th inst. and covering "the transactions of this (your) office from September 28, 1899, to date, other than the usual routine work of the office and such transactions as applied to matters originating before that date."

Thanking you very kindly for your courtesy in the premises, I remain,

Yours very respectfully,

(Signed.) JOHN C. BAIRD.

SCHEDULE B.

EXECUTIVE CHAMBER.

Honolulu, November 9th, 1900.

The Honorable E. A. Hitchcock,

Secretary of the Interior,

Washington, D. C.

Sir:—

Mr. J. F. Brown, Commissioner of Public Lands, informs me that Mr. Baird, District Attorney at the Federal Court of the Territory of Hawaii, has recently told him that he has been instructed to enquire into the legality of Hawaiian land transactions since September, 1899, with authority to contest their validity,

and that he is of the opinion that there is no authority in the Territorial Government to sell public lands.

Upon the going into effect of the "Act to provide a government for the Territory of Hawaii," on the 14th of June last, with the provisions contained in sections 73 and 91 of the same relating to the Hawaiian public lands, I supposed that authority was thereby conferred upon the Territorial Government to dispose of public lands in the Territory under the provisions of the "Laws of Hawaii relating to Public Lands."

The limitations of leases of agricultural lands to terms of five years as provided in said section 73, raised a doubt in my mind as to Homestead Leases and Rights of Purchase Leases, whether such limitation applied to them, and I wrote you for instructions in the matter July 10th. Your letter, dated July 27th, was duly received by me. This letter stated that such limitation does not apply to Homestead Leases and Right of Purchase Leases, and explains that "it was evidently not intended to change the existing provisions of the Hawaiian law by which title to the public lands may be acquired, but it was the intention to continue those provisions for the present at least."

With this letter, together with the provisions of the Organic Act referred to, my mind was clear as to the authority of this Government to act under the Hawaiian laws and the Territorial Act in the matter of land transactions, and the Commissioner of Public Lands was instructed to proceed with the work of his department.

Mr. Brown has taken up the work of furnishing land to settlers in several directions, and has in Olaa, Hawaii, disposed of a considerable number of holdings upon conditions of time payment, residence and improvement. These intending settlers would be much prejudiced if their interests already acquired in these holdings should be set aside as invalid, or even if doubt and uncertainty should be thrown upon them by litigation.

There is a considerable demand for lands for settlement purposes from Hawaiians, Portuguese and Americans and probably from persons of other nationalities, and it seems important from a public standpoint that the work of furnishing such persons with homesteads should not again be brought to a standstill.

I need hardly call your attention to the embarrassment which

such action would cause the Territorial Government by making it appear either that it does not understand its duties or is not anxious to keep within its authority.

I have the honor to be, Sir,

Very respectfully,

(Signed.) SANFORD B. DOLE.

DEPARTMENT OF THE INTERIOR.

Washington,

W. V. D. December 10, 1900.

The Governor of Hawaii.

Sir:—

Referring to your letter of this 13th ultimo, enclosing a statement by the Commissioner of Public Lands of his views respecting the authority of the Hawaiian officers over the public lands in Hawaii, I transmit herewith a copy of a letter of the 4th instant, to the Attorney General, from the Assistant Attorney General assigned to this Department, which expresses the views of the Assistant Attorney General upon the question discussed by the Commissioner of Public Lands in the statement above named. The views of the Assistant Attorney General were reached after a consideration of the statement prepared by the Commissioner of Public Lands and of a like statement, but reaching a different conclusion, prepared by the United States Attorney for the District of Hawaii.

The views of the Assistant Attorney General, as expressed in his letter of the 4th instant, have my approval.

Very respectfully,

(Signed.) E. A. HITCHCOCK,

Secretary.

DEPARTMENT OF THE INTERIOR.

Office of the Attorney-General,
Washington,
December 4, 1900.

The Attorney-General.

Sir:—

Answering your letter of the 3rd instant, enclosing a letter of the ultimo from the United States Attorney for the District of Hawaii, together with a brief prepared by him and copies of correspondence, all relative to the authority of the public officers of the Territory of Hawaii to sell, lease or otherwise dispose of public lands in the Hawaiian Islands, I have read the enclosures named, but I do not agree with the United States Attorney in his conclusion that the public officers of the Territory of Hawaii are not authorized to sell, lease or otherwise dispose of public lands in the Hawaiian Islands. While the grant of authority could have been more plainly stated, it seems to me that the question is free from difficulty, and that subject to certain specified changes and amendments the Act of April 30, 1900 (31 Stat., 141), continues in force "the laws of Hawaii relating to public lands, and thereby provides a system whereby the public lands in those islands may be disposed of until Congress shall otherwise provide." These public lands are not granted to the Territory, but Congress in the exercise of its power and discretion has made the Hawaiian officers and Hawaiian laws, subject to the changes and amendments specified, its instruments for the time being for the disposal of these lands.

In your letter to me it is said "he (United States Attorney) seems to have come to a conclusion opposed to that in your report of July 10, 1900, to the Secretary of the Interior."

There was no report, letter or opinion from me upon this subject at or about the time named, but I find a letter from Acting Secretary Ryan to the Governor of Hawaii, dated July 27th last, and an opinion from myself to the Secretary of the Interior, dated October 16th last, both of which may be said to be opposed to the general views expressed by the United States Attorney for Hawaii.

If this communication does not answer the purpose intended to

be effected by your letter to me, I will be glad to await your further direction in the premises.

Herewith are the papers accompanying your letter.

Very respectfully,

WILLIS VAN DEVANTER,

Assistant Attorney General.

EDWARD S. BOYD,

Secretary of the Commission of Public Lands.